IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 291 OF 2005

Raghunath Anant Govilkar ...Petitioner

Versus

State of Maharashtra & Ors ...Respondents

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Mr. S.B. Deshpande, Advocate for Petitioner

Mr. D.P. Adsule, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 21ST JULY, 2005

P. C.:-

1. Heard both sides.

2. The petitioner has prayed for quashing of Criminal Case No. 499-P/2000 (old Criminal case No. 822/P/99). The said case is pending before the Additional Chief Metropolitan Magistrate, 37th Court at Esplanade, Mumbai. The said case is under Sections 465 to 468, 471 and 420 of I.P.C.

3. The petitioner is accused No.10 in the said case. The petitioner was a public servant. In the said case cognizance came to be taken after 10.8.1992. It is submitted that no sanction was obtained prior to taking cognizance and hence, on this ground the

proceedings in relation to the petitioner ought to be quashed.

4. The learned A.P.P. on the other hand has pointed out that the petitioner retired on 31.8.1989, the cognizance came to be taken after 10.8.1992 hence, on that day i.e. the date when the cognizance was taken the petitioner had ceased to be a public servant. Hence, in such case, sanction was not necessary. In support of this contention he has placed reliance on the decision of the Supreme Court in the case of **State of Kerala Vs. V. Padmanabhan Nair, (1999) 5 SCC 690**, wherein it is observed that if the accused ceased to be a public servant on the date of taking cognisance of the offences, sanction was not necessary. Further, the learned A.P.P. has submitted that the question whether the accused acted in the course of performance of his duties would only be examined during the course of the trial. He has submitted that it would be necessary to lead evidence in order to determine the fact whether the accused acted in the course of performance of his duties or not. In support of this contention, the learned A.P.P. has placed reliance on the decision of the Supreme Court in the case of **Rajkishor Roy Vs. Kamleshwar Pandey and Anr. 2002 SCC (Cri.) 1423.**

5. The learned advocate for the petitioner has

placed reliance on Rule 27(3) of the Maharashtra Civil Services (Pension) Rules, 1982, which reads as under:-

> " **27. Right of Government to withhold or** withdraw pension.
>
> . (3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution"

. In the present case it is seen that the proceedings were not instituted after four years, hence, the said rule would be of no help to the petitioner.

6. Thereafter, the learned advocate for the petitioner has contended that the proceedings in the present case are pending for a long time and in view of this the proceedings be quashed. In support of this contention he has placed reliance on the decision of the Supreme Court in the case of **S.G.**

Nain Vs. Union of India, reported in 1992 Cri.L.J. 560. In the said case the prosecution came to be quashed as the proceedings were pending for almost 14 years. In the present case it is seen that 14 years have not elapsed since the petitioner came to be implicated in the present case. Looking to the facts and the material collected by the prosecution, no case is made out for quashing of the proceedings.

7. Writ Petition is rejected.

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